



NATIONAL AUTOMOBILE DEALERS ASSOCIATION
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Legal & Regulatory Group

January 30, 2004

Honorable Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System (FRS)
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Regulation B, Docket No. R-1168; Regulation M, Docket No. R-1170;
and Regulation Z, Docket No. R-1167 (Regs B, M, and Z)

Dear Sir or Madam:

The National Automobile Dealers Association (NADA) represents 20,000 franchised automobile and truck dealers who sell new and used motor vehicles and engage in service, repair and parts sales. Together they employ in excess of 1,250,000 people nationwide, yet approximately 50% are small businesses as defined by the Small Business Administration.

Late last year, the FRS requested comment on, among other things, several proposed amendments to Regs B, M, and Z and their related Staff Interpretations/Commentaries. 68 Fed. Reg. 68786, *et seq.* (December 10, 2003). These proposals address harmonization of the term *clear and conspicuous*, minor technical amendments, and potential changes to Reg Z to better accommodate debt cancellation agreements. In response, NADA offers the following.

I. *Clear and Conspicuous*

The FRS specifically proposes to incorporate into Regs B, M, and Z the Reg P definition of *clear and conspicuous*. Reg P, which deals with the Privacy of Consumer Financial Information, defines *clear and conspicuous* to mean *reasonably understandable and designed to call attention to the nature and significance of the information*. 12 CFR §216.3(b)(1). This definition dates to 2000 and reflects the latest deliberations on the subject between the FRS and the regulated community. Read together with the examples set out in Section 216.3(b)(2), the Reg P definition offers fairly precise guidance as to how to be *clear and conspicuous* when making required disclosures.

Regs B, M, and Z currently contain several different definitions of *clear and conspicuous*. Any harmonization between regulations is in itself of value to dealerships acting as creditors, especially where terms involved in several rules apply to the same transaction, document or

advertisement. A review of Regs B, M, and Z suggests that there is nothing substantive that precludes application of the Reg P definition to their respective disclosure requirements. Consequently, NADA supports the proposed amendments to Sections 202.2(bb), 213.2(q), and 226.2(a)(27) and to the Official Staff Interpretations/Commentaries found at 202.2 2(bb), 213.2 2(q) and 226.2 2(a)(27).

Assuming the Reg P definition of *clear and conspicuous* is incorporated into Regs B, M, and Z as proposed, the FRS should endeavor to focus its compliance outreach efforts on the forms and advertising communities, to help foster an adequate understanding of the new standard and the practical effects it may have on the forms and ads those businesses produce.

II. Technical Amendments

The proposal contains a few technical amendments to Reg Z. One is a regulatory amendment (Section 226.2(b)(5)) and accompanying interpretive comment (2(b)-2) clarifying that the word *amount*, as used throughout Reg Z, means a numerical amount. While NADA is unaware of any confusion among dealerships regarding whether *amounts* should be set out numerically or descriptively, recent court decision(s) apparently warrant this clarification.

Other appropriate amendments include a conforming amendment involving Section 226.18 (Content of Disclosures) and comment 18(c)(1)(iii)-1, and amendments to comment 27 designed to reflect recent revisions to Section 226.27 governing the Language of Disclosures.

III. Information Request Regarding Debt Cancellation and Suspension Agreements

In its notice, the FRS asks several questions regarding the application of Reg Z to debt cancellation and suspension agreements. The responses to the following questions reflect products offered in conjunction with closed end-credit for new and used motor vehicle financing.

1. What are the similarities and differences among credit insurance, debt cancellation coverage, and debt suspension coverage?

Credit insurance enables vehicle purchasers to insure their loans for a premium, where the insurance company agrees to repay the creditor in the event payments become difficult or impossible due to events such as death, disablement or loss of income. Debt cancellation coverage is an agreement between the lender and the borrower where, for a fee, the lender eliminates the debt if the borrower dies or cancels the monthly payment if the borrower becomes disabled, unemployed or suffers some other specified hardship. Debt suspension coverage agreements enable borrowers who pay a fee to temporarily postpone all or part of their monthly payments to the lender when facing specified hardships. Insurance policy and agreement variations include the triggering circumstances they cover, the degree to which all principal and interest payments are canceled outright, and the degree to which principal and/or interest payments are suspended.

- 2. With what types of closed-end credit are debt cancellation and suspension products sold? Do creditors typically package multiple types of coverage (e.g., disability and divorce), or sell them separately? Do creditors typically sell the products at or after, consummation?**

Automobile dealers typically sell credit life and credit disability insurance products, which cover the loan balance in the event of death and payments in the event of a disability, either short and long term. While they are expected to increase in availability in the near future, lender debt cancellation or suspension agreements for these or other triggering events are not being heavily marketed for motor vehicle loans. Future products are expected to focus on accidental death and involuntary unemployment. By contrast, gap products (where triggering events involve the vehicle, not the borrower) are primarily of the debt cancellation or debt waiver variety. These products sometimes are packaged together, but more typically are sold separately, with premiums or fees charged up front, included in the finance charge, or included in the monthly payment. Unlike longer term home and other loans, the products for relatively short term automobile loans are typically sold at or soon after loan consummation.

- 3. What disclosures are made with the sale of a product or upon conversion from one product to another, whether required by TILA or other laws? How are monthly or other periodic fees disclosed to consumers?**

Product disclosures are typically governed by state insurance or banking laws, depending on whether the product is insurance or an agreement with the lender. The Office of the Comptroller of the Currency regulates the debt cancellation and debt suspension agreements of national banks. Required Reg Z disclosures are set out in 12 CFR §226.4(d) for amounts not included in the finance charge.

- 4. Under Regulation Z, fees for credit protection programs written in connection with a credit transaction are finance charges but some fees may be excluded from the disclosed finance charge if required disclosures are made and the consumer affirmatively elects the optional coverage in writing. Is there a need for guidance concerning the applicability of those provisions to certain types of coverage now available? Are the required disclosures adequate for all types of products subject to 4(d)(1) or 4(d)(3)?**

The disclosures set out in Section 226.4(d) generally are sufficient for all of the products currently available and being marketed by automobile dealerships. At the same time, the language of this section should be amended to accommodate the sale and proper disclosure of all insurance, products, debt cancellation agreements, or debt suspension agreements marketed in conjunction with closed-end credit for purposes of protecting borrowers and lenders, regardless of the triggering life event or hardship.

Honorable Jennifer J. Johnson
January 30, 2004
Page 4

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Respectfully submitted,

Douglas I. Greenhaus
Director, Environment Health and Safety